



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MEMORANDUM FOR DIRECTOR, FIELD OPERATIONS, EAST
DIRECTOR, FIELD OPERATIONS, WEST
DIRECTOR, TECHNICAL GUIDANCE
DIRECTOR, APPEALS PROCESSING SERVICES

FROM: Diane S. Ryan /s/ *Diane S. Ryan*
Director, Technical Services

SUBJECT: INTERIM GUIDANCE
New Procedures When Offer in Compromise Submitted as a
Collection Alternative in Collection Due Process or Equivalent
Hearing Cases

This interim guidance memorandum provides notification regarding procedural changes when an offer in compromise (OIC) is received as a collection alternative during a collection due process (CDP) or equivalent hearing (EH) case. The procedures apply to CDP/EH OIC's received by both campus and field Appeals offices that meet Centralized Offer in Compromise (COIC) criteria.

COIC will investigate all CDP/EH OICs meeting COIC criteria. After completing the investigation, COIC will return all offers to Appeals. When COIC accepts the offer, Appeals will adopt COIC's acceptance decision. When COIC rejects, returns or mandatorily withdraws the offer, Appeals will make the final determination.

Appeals and Collection agreed to adopt the Government Accountability Office's (GAO) recommendation that Appeals transfer offers, raised in CDP cases when taxpayers seek an OIC as a collection alternative and raise no liability issues, to the IRS's two centralized OIC processing centers for investigation and evaluation before consideration by Appeals.

The procedures attached to this memorandum are effective from the date of this memorandum and will be included in the next revision of the new Collection Due Process Internal Revenue Manual (IRM) Chapter 8.22. Please disseminate this information to all processing and technical employees, and all managers with employees in these positions.

If you have any questions, please contact Ruth Vriend, Acting Director, Tax Policy and Procedure or a member of your staff may contact Janis Suchyta, CDP Program Analyst at (313) 628-3003.

Attachment

cc: www.irs.gov

Servicewide Policy, Directives, and Electronic Research (SPDER)
Director, Collection
Chief Counsel
Chief, Communications, Liaison, and Disclosure
National Taxpayer Advocate

1. All collection due process (CDP) and equivalent hearing (EH) offers meeting Centralized Offer in Compromise (COIC) criteria will be transferred to and investigated in a COIC site. CDP/EH offers that do not meet COIC criteria will be investigated by Appeals. Appeals will request assistance from Revenue Officer field groups, as needed, on offers that do not meet COIC criteria. See IRM 8.7.2.4.7.2 OIC ARI Procedures.
2. The following procedures clarify the processing of both COIC-investigated and Appeals-investigated offers.
3. Date-stamp the Form 656 in the upper right corner of Page 1 with the date the offer was received in Appeals and document its receipt in the CDP/EH case activity record. DO NOT SIGN THE FORM 656.

Note: Keep in mind that a final determination regarding the offer must be made within 24 months from the date the offer was received in Appeals. If a final offer determination is not made within that 24-month timeframe, the offer will be deemed accepted under 26 U.S.C. § 7122(f).

4. COIC will retain and investigate offers meeting the following COIC criteria:
 - Individuals (Individual Master File-IMF)
 - Sole-proprietors (without employees) and gross receipts of \$500,000 or less
 - Out of Business self-employed

Prepare Transmittal Cover sheet (Exhibit #1) for offers meeting COIC criteria and using the Transmittal Cover sheet, promptly send the Form 656 to the appropriate COIC site. The specially-prepared Transmittal form provides a two-fold purpose:

- a. Will ensure prompt identification of the case in COIC
- b. COIC will use the Transmittal Cover sheet to acknowledge receipt of the offer and communicate whether the offer is processable

Note: Do not prepare a processability package for COIC-criteria OIC's.

Note: Where Appeals retains to investigate a CDP OIC meeting COIC criteria, Appeals must prepare the APGOLF processability package and inform COIC on the transmittal that the OIC must be returned to Appeals for investigation. ATM approval is required for Appeals to retain and investigate CDP OICs meeting COIC criteria; the Appeals employee will document in the case activity record the reason the offer is being retained and investigated in Appeals.

5. If COIC determines the offer is not processable, COIC will:

- a. Generate the not-processable letter (for COIC-criteria OICs only),
 - b. Mail the not-processable letter,
 - c. Refund all applicable fees and payments,
 - d. Return the case to Appeals with no further action,
 - e. Include a copy of the not-processable letter in the case file.
6. The following offers do NOT meet COIC criteria:
- Corporations
 - Partnerships
 - Estates and Trusts
 - Currently incarcerated taxpayers
 - Trust Fund Recovery Penalty (TFRP) – Doubt as to Liability (DATL)
 - Any business with employees
 - Closely-held corporations
 - LLP and LLC
 - Partners in a partnership which serves as a primary source of income
 - Sole-proprietors (without employees) and gross receipts greater than \$500,000

For OICs that do NOT meet COIC criteria, prepare the “processability” package currently on APGOLF. Offers not meeting COIC criteria will be returned to Appeals after the processability determination.

7. When to request an OIC WUNO related to a CDP/EH case:
- a. Request an OIC WUNO after COIC makes a processability determination.
 - b. COIC will fax a copy of Exhibit #1 to the originator when they determine the offer they are retaining to investigate is processable (generally within 3-14 days).
 - c. COIC will return a processability determination on OICs not investigated in COIC (i.e., not meeting COIC criteria or retained in Appeals to investigate) to the originator with the entire case file.

Note: Do not request an OIC WUNO for non-processable OICs. Non-processable OICs are not recognized as an OIC; COIC does not input TC 480s. If an OIC is later made processable, give the Form 656 a new date-stamp and start the processability process anew.

8. How to request an OIC WUNO related to a CDP/EH case: Fax or hand-carry the following information to your local servicing Appeals Processing Services (APS):
- a. A copy of the related CDP case summary card noted at the top in red "Please create OIC WUNO" with feature code = DP and Notes - XREF (WUNO of the related OIC case),
 - b. A copy of page one of Form(s) 656 identifying all periods included on the OIC,
 - c. IMFOLI (IMF) or BMFOLI (BMF). Add the TOTAL MOD BALANCE for all periods, and

- d. REQAPP & RECDATE = Date stamped in upper right-hand corner of Form 656; ASGNDATE = current date.

9. Appeals action on CDP and OIC WUNOs when COIC investigates the offer:
The hearing officer will:

- a. Add feature code "CO" to both the CDP and OIC WUNO (both WUNOs must also have DP feature code),
- b. Suspend both WUNOs by selecting carats history Action Code SU, subaction=PI and suspense action=E/OIC. When COIC returns the case, take the case out of suspended status with carats history Action Code SU, sub action=TO,
- c. **For the OIC WUNO only:** Email or hand-carry to your local servicing APS, the "ACDS Update" form requesting input of ACDS action code DDJRET, which puts the case into E/DD status. When COIC returns the case, similarly email/hand carry a request to APS to remove ACDS action code DDJRET.
- d. Request that APS input STAT code "TIPRA" on the OIC WUNO with the OIC received date. (Note: TIPRA is a new STAT code that is in the process of being added to ACDS to monitor the TIPRA 2-year "determination" date on the statute report. The TIPRA enhancement may not be immediately available.)

10. COIC-investigated OICs: Notify the taxpayer by letter, using the following paragraph or similar language that the OIC is being forwarded to COIC for investigation and the taxpayer may receive further communication from COIC. Appeals, however, will retain jurisdiction of the CDP case and will make the final determination regarding the OIC:

"You have requested consideration of an Offer In Compromise to resolve your tax liabilities. While Appeals will retain jurisdiction of your case, we have requested assistance from the IRS Centralized Offer In Compromise (COIC) unit to research and verify the information you have provided. It may be necessary for COIC Service personnel to contact you for information necessary to expedite this review. The Service employee may also need to contact third parties to verify some of this information. The information we have requested is needed to help us reach a resolution of your appeal. We will share with you COIC's information and ask you for comment before using COIC's information in our final determination of your Offer."

Note: COIC will inform taxpayers that they must be compliant before COIC evaluates their OIC (if they have compliance issues such as unfiled tax returns or missing Federal Tax Deposits).

11. COIC will take the following actions on all processable OICs:

- a. Input TC 480 jurisdiction 1 for retained OICs and TC 480 jurisdiction 3 for non-retained OICs.

- b. STAUP EH and non-CDP periods to status 71.
12. COIC will take the following additional actions on all processable OICs that it retains to investigate:
 - a. Add CDP OIC cases to their Automated OIC system (AOIC).
 - b. Work to completion all “acceptable” OICs.
 - c. Provide a preliminary recommendation to Appeals on denied (i.e., rejected, returned, mandatory withdrawal) OICs. Appeals will make the final determination on denied OICs.
 13. If during the investigation COIC discovers complex issues that would normally be a field issue, COIC will:
 - a. Document the case file regarding the complex issue.
 - b. Return the entire case file with all documentation to Appeals.
 - c. Delete the case from AOIC.
 - d. Input STAUP or TC 480 jurisdiction code 3 before sending the case to Appeals. This action should stop all collection activity before Appeals has an opportunity to work the case.
 14. If COIC “accepts” the OIC, Appeals will adopt the recommendation. The hearing officer will:
 - a. Close the CDP/EH: Ask the taxpayer to sign Form 12257, Summary Notice of Determination. If the taxpayer does not sign the waiver, issue the Notice of Determination or Decision Letter, incorporating COIC’s recommendation to accept the offer.
 - b. Close the OIC WUNO: Generate the OIC 5402 and select closing code 15. Select “CDP OIC acceptable” as the Resolution Reason. In “Remarks” section, type “COIC accepted OIC and issued the acceptance letter. No further action required by APS”.

Note: The Appeals employee will not ask the taxpayer to withdraw the CDP or EH. It is important, where the hearing request was timely, that Appeals preserves the taxpayer’s retained jurisdiction rights.

15. COIC will:
 - a. Issue the acceptance letter.
 - b. Forward original documents (Form 7249, et al) to the Monitoring OIC (MOIC) unit.
 - c. Forward the required documents to the Public Inspection File.
 - d. Return to Appeals, copies of the acceptance letter, Form 7249, and amended Form 656, if applicable.
 - e. STAUP CDP periods to status 71 (prevents periods from reverting to collection status when TC 520 cc 76/77 is reversed).
 - f. Close the case on AOIC as accepted.

Note: COIC's acceptance letter qualifies as a final determination under 26 U.S.C. § 7122(f).

16. APS will:

- a. Issue the CDP Notice of Determination, EH Decision Letter or Form 12257 Waiver following established procedures.
- b. Close the OIC WUNO on ACDS. Since COIC issues the acceptance letter, APS will issue only the CDP/EH letter.

17. With no less than one year left on the 24-month timeframe in which the Service must make a determination on an OIC, COIC will:

- a. Return the Form 656, investigation and administrative files, and all history to Appeals for a final determination using Transmittal Cover Sheet (Exhibit #2).
- b. Mail the taxpayer a preliminary recommendation letter, which will include copies of the Asset Equity Table (AET) and Income and Expense Equity Table (IET), if COIC prepared them. The letter will also inform the taxpayer that the OIC is being returned to Appeals for a final determination.

Note: If COIC is unable to return a preliminary recommendation to Appeals that allows Appeals 12 months to make a final determination, COIC will contact the assigned Appeals employee and provide a status report on the completion of their investigation. COIC will not discuss with Appeals the merits of the OIC, which would be a prohibited ex parte communication. If COIC's status report gives the Appeals employee concern that Appeals may not be able to make a final determination within the required 24 months, Appeals may ask COIC to promptly return the case to Appeals, deleting the case from AOIC and inputting TC 480 and STAUPs as necessary to prevent collection activity.

Note: The Appeals employee will need to share the results of COIC's investigation where COIC did not prepare an AET/IET or otherwise did not share their recommendation. Appeals sharing COIC's recommendation and requesting comment before using COIC's information in the final determination will prevent a prohibited ex parte communication.

Note: COIC's preliminary recommendation is NOT a final determination under 26 U.S.C. § 7122(f). A final offer determination must be made within 24-months from the date the offer was date-stamped received or the offer will be deemed accepted.

18. If COIC makes any recommendation other than to accept the OIC (i.e., rejection, return, mandatory withdrawal), Appeals will make the final determination, which can include accepting or amending the offer. When Appeals independently agrees with COIC's non-acceptance recommendation, Appeals will consider other collection alternatives, as appropriate, following established procedures

and make its final determination within 60 days of receiving COIC's investigation report.

Note: COIC, to the extent possible, must promptly close a completed OIC investigation on AOIC. COIC cannot close the CDP OIC on AOIC until they receive Appeals final determination. If the taxpayer requests a different collection alternative and you are unable to make a final determination within 60 days of COIC's preliminary recommendation of the OIC (e.g., the taxpayer requests innocent spouse relief after her offer is rejected), send the COIC caseworker an email with the reason you cannot make a final determination within 60 days.

19. Mandatory withdrawal: When a taxpayer has submitted a periodic payment offer and fails to submit installment payments subsequent to the first installment payment, and Collection has given the taxpayer an opportunity to resolve the problem, the offer meets mandatory withdrawal criteria. COIC will return the OIC to Appeals. Appeals will make one additional attempt to bring the taxpayer into compliance with the missing payments before treating the offer as a mandatory withdrawal.
20. The hearing officer will contact the COIC investigator via encrypted email with the following CDP/EH case closing information:
 - a. How case closed, i.e., issuance of Notice of Determination or Decision Letter, or 12257 waiver secured.
 - b. Date letter prepared or date waiver secured.

Note: COIC requires "how" and "when" the CDP/EH case is closed to close the OIC case on AOIC.

21. If the taxpayer sends Appeals a CDP/EH withdrawal, withdrawing the CDP/EH request during COIC's investigation of the OIC, Appeals will accept and process the CDP withdrawal following established procedures and send an encrypted email to COIC, informing COIC of the CDP/EH withdrawal.

Note: The CDP withdrawal must be voluntary. Do NOT solicit a withdrawal. See IRM 8.7.2.3.1 regarding CDP Withdrawals.

Note: Upon notification from Appeals that the taxpayer withdrew their CDP/EH hearing request, COIC will continue their investigation; COIC will not return any paperwork to Appeals.

22. If COIC receives an OIC directly from the taxpayer, and the COIC site CDP coordinator determines there is an open CDP/EH case, the coordinator will send the assigned Appeals employee an email and inform them of the date they received the OIC. The assigned Appeals employee will:
 - a. Update the case activity record regarding COIC's receipt of the OIC.
 - b. Add "DP" feature code to the CDP/EH WUNO.

- c. Request creation of an OIC WUNO with DP feature code REQAPP & RECDATE = received date (provided by COIC); ASGNDATE = current date.
 - d. Suspend both WUNOs by selecting carats history Action Code SU, sub action=PI, and suspense action=E/OIC. When COIC returns the case, take the case out of suspended status with carats history Action Code SU, sub action=TO.
 - e. email or hand carry a request to APS on the "ACDS Update " form requesting input of Action Code DDJRET on OIC WUNO ONLY. DDJRET will place OIC WUNO in E/DD status. Also, request that APS input on OIC WUNO new STAT code "TIPRA" with OIC received date. (Note: TIPRA is a new STAT code that is in the process of being added to ACDS to monitor the TIPRA 2-year "determination" date on the statute report. The TIPRA enhancement may not be immediately available.)
 - f. Suspend further actions on the CDP/EH case unless other issues beside the OIC collection alternative need to be addressed.
23. If COIC receives a CDP or EH request directly from a taxpayer whose OIC they are investigating, the COIC site CDP coordinator, following established procedures, will:
- a. Prepare Form 12153-B,
 - b. Have the CDP case established on CDPTS
 - c. Forward the case to Appeals Processing Services (APS) with a copy of the Form 656.
24. APS will:
- a. Card-in the CDP/EH case with "DP" feature code.
 - b. Update CDPTS to Stage 4.
 - c. Input TC 520 cc 76/77, as needed.
 - d. Card-in OIC WUNO; add "DP" feature code, REQAPP & RECDATE = received date stamped on Form 656, and ASGNDATE = current date.
 - e. Add "TIPRA" and OIC periods to "Summary Return Information" return fields for every OIC period. (Note: TIPRA is a new STAT code that is in the process of being added to ACDS to monitor the TIPRA 2-year "determination" date on the statute report. The TIPRA enhancement may not be immediately available.)
25. The Appeals employee assigned the CDP/EH case where COIC has already been investigating the OIC will:
- a. Send (or verify the sending of) Appeals Uniform Acknowledgement Letter.
 - b. Update the case activity record regarding COIC's receipt and investigation of the OIC.
 - c. Verify the input of the TC 480 and verify and document the CSED suspension (TC 520), as appropriate.

- d. Document in the case activity record “no prior Involvement” and “legal and administrative” review.
- e. Suspend further actions on the CDP/EH case unless other issues beside the OIC collection alternative need to be addressed. Suspend both WUNOs by selecting carats history Action Code SU, sub action=PI, and suspense action=E/OIC. When COIC returns the case, take the case out of suspended status with carats history Action Code SU, sub action=TO.
- f. Request that APS input action code DDJRET to place OIC WUNO in E/DD status. Request that APS remove action code DDJRET when COIC completes investigation.
- g. Add feature code “CO” to both CDP and OIC WUNOs.

Note: Where COIC first received the CDP/EH hearing request while investigating the OIC and forwarded the CDP/EH request to Appeals, the hearing officer will not need to issue a Substantive Contact Letter (SCL) until they receive COIC’s preliminary OIC recommendation. An SCL must be issued within 30 days of receiving COIC’s preliminary recommendation.

- 26. If COIC erroneously issues a final rejection letter, Appeals will inform the taxpayer that the OIC is under Appeals’ jurisdiction and Appeals will address the OIC in Appeals determination or decision letter. COIC will not “rescind” their rejection letter.
- 27. Taxpayers or their authorized representatives do not have the option to request that Appeals, rather than COIC, investigate their offer unless the taxpayer or their authorized representative provides extenuating circumstances. The ATM must approve the extenuating circumstances; the hearing officer must document these in the case activity record.

Exhibit #1

EXPEDITE PROCESSING REQUIRED**CDP/EH OIC COVER SHEET****FOR APPEALS USE ONLY**

Appeals return address:

Attn:

Contact Number:

E-mail:

FAX:

Check(s) enclosed:

- ☐ Application fee (**Amount:**_____)
- ☐ TIPRA payment (**Amount:**_____)
- ☐ Deposit (**Amount:**_____)
- ☐ 656-A in lieu of application fee, and payment(s)

FOR COIC USE ONLY☐ Processable (date)_____☐ Not Processable
(date)_____

Mark the appropriate box, and fax a copy of this transmittal to the Appeals contact shown above. Retain the original transmittal with the case file.

Mail Form 656, application fee, TIPRA payment(s), deposit (if applicable), and cover sheet to the appropriate centralized site:

MCOIC
Greta Bratcher
Stop 880
5333 Getwell Rd.
Memphis, TN 38118

(901) 395-0421

BCOIC
Cynthia D'Esposito
1040 Waverly Ave
Stop 680
Holtsville, NY 11742

(631) 687-3948

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Exhibit #2

EXPEDITE PROCESSING REQUIRED

CDP/EH OIC COVER SHEET

FOR COIC USE ONLY

Collection has completed the investigation of the attached OIC.

Note: If the offer was accepted, the AOIC Acceptance Letter has been issued, and a final determination has been made. The Appeals file will consist of the following: (1) a copy of Acceptance Letter, (2) Form 7249, and (3) if applicable amended Form 656 only. COIC will take all final disposition actions in accordance to IRM 5.8.8, Acceptance Processing.

COIC Proposed Disposition:

- ☐ *Offer Accepted* – Collection mailed acceptance letter.
- ☐ *Offer Rejected* – Collection mailed pre-determination rejection letter.
- ☐ *Mandatory Withdrawal* – Taxpayer failed to make periodic payments.
- ☐ *Offer Withdrawn*

FOR COIC USE ONLY:

A final determination is required on this offer by _____.

Please inform the following individual by encrypted e-mail with the appropriate closing information. The e-mail must include the following information:

- Issued Notice of Determination (Date)
- Issued Decision Letter (Date)
- Issued Closing Letter for Form 12257 Waiver (Date)
- Issued Acknowledgement Letter for Form 12256 Withdrawal (Date)
- Taxpayer Filed Bankruptcy, which prevents issuance of Final Determination. Offer must be returned as not processable if taxpayer files bankruptcy (Date)

Attn (COIC): _____

E-mail (COIC): _____

FOR COIC ONLY

Return the case to the following Appeals contact:

Name: _____

Address: _____

Contact Number: _____